IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 396 of 1995

Date of Decision: 31st December, 2007

Rulia Ram (since deceased) through his LR Smt. Soma	Appellant
Versus	
Makho Devi and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr. Ajay Sharma, Advocate,

For the respondents 1&2: Mr.N.K.Thakur, Advocate

Sanjay Karol, J. (Oral)

Smt. Makho Devi and Sh. Kashmir Singh, plaintiffs and present respondents, filed a suit against Rulia Ram, defendant No.1 as contesting defendant and Sh.Sita Ram and Sh.Siba Ram as proforma defendants No.2 and 3 to the effect that the plaintiffs and defendants 2 and 3 are joint owners with respect to suit land. Defendant No.1, who is successor-in-interest of the present appellant fraudulently got himself recorded as tenant in the revenue records in connivance with defendants No.2 and 3 and the revenue officials. The plaintiffs assailed this action by way of Civil Suit.

The trial Court framed the following issues:-

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

"1. Whether the suit land is jointly owned and possessed by the parties, as alleged? OPP

2. If issue No.1 is not proved, then whether the defendant No.1 was previously in possession of the suit land as tenant at will and now has become owner in possession thereof by operation of land, as alleged? OPD. "

Vide judgment and decree dated 24.1.1991 Sub Judge Ist Class, Court No.II, Amb, district Una, decreed the plaintiffs" suit as prayed for.

The appeal filed by Rulia Ram was dismissed vide impugned judgment and decree dated 16.6.1995 passed by District Judge, Una, in Civil appeal No. 29/91.

During the course of hearing, it has been brought to my notice that Issue No.2 as framed by the trial Court was not decided in view of its findings returned on Issue No.1. While deciding Issue No.1 the effect of the order dated 6.12.1983 passed by the appropriate authority under law has not been considered or decided at all. Even, the first Appellate Court has not considered and given any finding with regard to the order dated 6.12.1983 passed by Land Reforms Officer recording tenancy rights of defendant No.1 on the basis of which Rulia Ram claimed to be a tenant of the plaintiffs. No doubt the jambandies (revenue record) pertaining to the year 1986-87 (Ext.P-2) has been considered by the first Appellate Court, however, the entries in the revenue record were pursuant to and as a consequence of order dated 6.12.1983 passed by the officer. Rulia Ram referred to the said order in his written statement.

In the absence of any consideration and determination of this fact by the Courts below, it would be in the interests of justice and parties that the matter is remanded back to the first Appellate Court to consider the issue afresh. Accordingly, judgment and decree dated 16.6.1995 passed by District Judge, Una, in Civil Appeal No. 29/91, is set aside and the matter is remanded back to the District Judge, Una, for consideration afresh in accordance with law. The appeal is restored to its original position. The substantial question of law are left open.

The parties are directed to appear before the concerned Court on 18.1.2008. The record be sent back immediately. Keeping in view the time factor, it is directed that the parties be heard and the matter disposed of positively before 31.3.2008.

Needless to add that the District Judge would pass an order uninfluenced by any observation made in the present order.

31st December, 2007
(C)

(Sanjay Karol)
Judge.